



January 30, 2004

HOUSE BILL No. 1349

DIGEST OF HB 1349 (Updated January 29, 2004 10:04 am - DI 84)

Citations Affected: IC 34-6; IC 34-13; IC 34-58; noncode.

Synopsis: Litigation by inmates. Provides that before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit certain documentation to the court. Requires a court to screen an offender's complaints and petitions and dismiss a claim that is frivolous, seeks monetary relief from a defendant who is immune from such relief, or is not a claim upon which relief may be granted. Prohibits an offender who has had three claims dismissed after court screening from filing an action unless a court determines that the offender is in immediate danger of serious bodily injury.

Effective: July 1, 2004.

Chowning, Goodin, Koch, Thomas

January 15, 2004, read first time and referred to Committee on Appointments and Claims.
January 29, 2004, amended, reported — Do Pass.

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HB 1349—LS 7291/DI 109+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1349

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-89 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 89. (a) "Offender", for
3 purposes of IC 34-13-3-7, means a person who is committed to the
4 department of correction or was committed to the department of
5 correction.

6 (b) "Offender", for purposes of IC 34-58, means a person who
7 is committed to the department of correction or incarcerated in a
8 jail.

9 SECTION 2. IC 34-58 IS ADDED TO THE INDIANA CODE AS
10 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
11 2004]:

12 ARTICLE 58. SCREENING OF OFFENDER LITIGATION

13 Chapter 1. Screening Procedure

14 Sec. 1. Upon receipt of a complaint or petition filed by an
15 offender, the court shall docket the case and take no further action
16 until the court has conducted the review required by section 2 of
17 this chapter.

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1 **Sec. 2. (a) A court shall review a complaint or petition filed by**
 2 **an offender and shall determine if the claim may proceed. A claim**
 3 **may not proceed if the court determines that the claim:**

- 4 (1) is frivolous;
 5 (2) is not a claim upon which relief may be granted; or
 6 (3) seeks monetary relief from a defendant who is immune
 7 from liability for such relief.

8 **(b) A claim is frivolous under subsection (a)(1) if the claim:**

- 9 (1) is made primarily to harass a person; or
 10 (2) lacks an arguable basis either in:
 11 (A) law; or
 12 (B) fact.

13 **(c) A court shall dismiss a complaint or petition if:**

- 14 (1) the offender who filed the complaint or petition received
 15 leave to prosecute the action as an indigent person; and
 16 (2) the court determines that the offender misrepresented the
 17 offender's claim not to have sufficient funds to prosecute the
 18 action.

19 **Sec. 3. If a court determines that a claim may not proceed under**
 20 **section 2 of this chapter, the court shall enter an order:**

- 21 (1) explaining why the claim may not proceed; and
 22 (2) stating whether there are any remaining claims in the
 23 complaint or petition that may proceed.

24 **Sec. 4. The clerk of the court shall send an order entered under**
 25 **section 3 of this chapter to:**

- 26 (1) the offender;
 27 (2) each defendant or respondent in the action;
 28 (3) the department of correction, if the offender is
 29 incarcerated by the department of correction;
 30 (4) the sheriff of the county in which the inmate is
 31 incarcerated, if the inmate is incarcerated in a county or city
 32 jail; and
 33 (5) the attorney general.

34 **Chapter 2. Abusive Litigation**

35 **Sec. 1. If an offender has filed at least three (3) civil actions in**
 36 **which a state court has dismissed the action or a claim under**
 37 **IC 34-58-1-2, the offender may not file a new complaint or petition**
 38 **unless a court determines that the offender is in immediate danger**
 39 **of serious bodily injury (as defined in IC 35-41-1-25).**

40 SECTION 3. IC 34-13-7 IS ADDED TO THE INDIANA CODE AS
 41 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 2004]:

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**Chapter 7. Commencement of Action Against Public Employees
and Government Entities by Offender**

**Sec. 1. (a) In addition to any other requirements under law,
before filing a civil rights action or tort claim action against a
public employee or government entity, an offender must submit to
the trial court:**

- (1) a copy of the complaint the offender wishes to file;**
- (2) a list of all cases previously filed by the offender involving
the same, similar, or related cause of actions; and**
- (3) a copy of all relevant documents pertaining to the ultimate
disposition of each previous case filed by the offender against
any of the same defendants in a state or federal court. The
relevant documents include:**

- (A) the complaint;**
 - (B) any motions to dismiss or motions for summary
judgment filed by the defendants in the actions;**
 - (C) the state or federal court order announcing disposition
of the case; and**
 - (D) any opinions issued in the case by any appellate court.**
- (b) An offender must file with the court a brief that includes:**
- (1) a legal argument;**
 - (2) a citation to authority; and**
 - (3) an explanation to the court why the new action is not
subject to dismissal as a matter finally decided on its merits
by a court and not subject to litigation again between the
same parties.**
- (c) If the trial court determines that the complaint is frivolous,
malicious, or otherwise utterly without merit, or fails to state a
claim upon which relief may be granted, the court shall dismiss the
complaint.**

**SECTION 4. [EFFECTIVE JULY 1, 2004] IC 34-58, as added by
this act, applies to a cause of action filed after June 30, 2004.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred House Bill 1349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-89 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 89. **(a)** "Offender", for purposes of IC 34-13-3-7, means a person who is committed to the department of correction or was committed to the department of correction.

(b) "Offender", for purposes of IC 34-58, means a person who is committed to the department of correction or incarcerated in a jail.

SECTION 2. IC 34-58 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 58. SCREENING OF OFFENDER LITIGATION

Chapter 1. Screening Procedure

Sec. 1. Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter.

Sec. 2. (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:

- (1) is frivolous;**
- (2) is not a claim upon which relief may be granted; or**
- (3) seeks monetary relief from a defendant who is immune from liability for such relief.**

(b) A claim is frivolous under subsection (a)(1) if the claim:

- (1) is made primarily to harass a person; or**
- (2) lacks an arguable basis either in:**
 - (A) law; or**
 - (B) fact.**

(c) A court shall dismiss a complaint or petition if:

- (1) the offender who filed the complaint or petition received leave to prosecute the action as an indigent person; and**
- (2) the court determines that the offender misrepresented the offender's claim not to have sufficient funds to prosecute the action.**

Sec. 3. If a court determines that a claim may not proceed under

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section 2 of this chapter, the court shall enter an order:

- (1) explaining why the claim may not proceed; and
- (2) stating whether there are any remaining claims in the complaint or petition that may proceed.

Sec. 4. The clerk of the court shall send an order entered under section 3 of this chapter to:

- (1) the offender;
- (2) each defendant or respondent in the action;
- (3) the department of correction, if the offender is incarcerated by the department of correction;
- (4) the sheriff of the county in which the inmate is incarcerated, if the inmate is incarcerated in a county or city jail; and
- (5) the attorney general.

Chapter 2. Abusive Litigation

Sec. 1. If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).".

Delete page 2.

Page 3, delete lines 1 through 12.

Page 4, after line 3, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2004] IC 34-58, as added by this act, applies to a cause of action filed after June 30, 2004.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1349 as introduced.)

HARRIS, Chair

Committee Vote: yeas 12, nays 0.

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